

So Ordered.



Dated: March 25th, 2021



Whitman L. Holt
Bankruptcy Judge

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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re

12 EASTERDAY RANCHES, INC., *et al.*

13 Debtors.¹

14 Chapter 11

15 Lead Case No. 21-00141-11
16 Jointly Administered

17 **FINAL ORDER AUTHORIZING
DEBTOR EASTERDAY FARMS
TO USE CASH COLLATERAL
AND GRANTING ADEQUATE
PROTECTION**

18 Upon the motion (the “Motion”)² of above-captioned debtor and debtor in
19 possession, Easterday Farms, a Washington general partnership (the “Debtor”), under
20 sections 361, 363, and 507 of title 11 of the United States Code (the “Bankruptcy
Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy
Rules”), and Rule 4001-3 of the United States Bankruptcy Court Eastern District of

24 ¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc.,
25 (21-00141) and Easterday Farms, a Washington general partnership (21-00176).

26 ² Capitalized terms not defined herein shall have the meanings set forth in the Motion.

27 FINAL ORDER AUTHORIZING DEBTOR
28 EASTERDAY FARMS TO USE CASH
29 COLLATERAL AND GRANTING ADEQUATE
30 PROTECTION – Page 1

1 Washington Local Rules (“LB”), for interim and final orders authorizing the Debtor
2 to use cash collateral in which Washington Trust Bank (“Washington Trust”), CHS
3 Capital, LLC (“CHS”), Prudential Insurance Company of America (“Prudential”),
4 Equitable Financial Life Insurance Company f/k/a AXA Equitable Life Insurance
5 Company (“Equitable Financial”), LTM Investments LLC (“LTM Investments”)
6 (Washington Trust, CHS, Prudential, Equitable Financial and LTM Investments,
7 collectively the “Cash Collateral Lenders”), J.R. Simplot Company (“Simplot”), Weyns
8 Farms, LLC (“Weyns Farms”), Sunray Farms, LLC (“Sunray Farms”), and Brad Curtis
9 Farms (Simplot, Weyns Farms, Sunray Farms, and Brad Curtis Farms, together with the
10 Cash Collateral Lenders, the “Cash Collateral Parties”) may assert an interest and
11 granting adequate protection.

12 The Debtor has served notice of the Motion as is appropriate under the
13 circumstances, as required under sections 102(1) and 363 of the Bankruptcy Code,
14 Bankruptcy Rule 4001(b), and LBR 4001-3. The Office of U.S. Trustee has appointed
15 the Official Committee of Unsecured Creditors (the “Farms Committee”) in the
16 Debtor’s case and a separate Official Committee of Unsecured Creditors in the case of
17 Easterday Ranches, Inc. (the “Ranches Committee” and referred to collectively with the
18 Farms Committee as the “Committees” and each individually, a “Committee”).

19 An emergency interim hearing on the Motion having been held by this court on
20 February 11, 2021 and an interim order having been entered on February 12, 2021 [ECF
21 No. 142]. A final hearing on the Motion having been held on March 23, 2021. Upon
22 the record made by the Debtor at such final hearing, after considering the Motion and
23 the arguments and evidence presented, and after due deliberation and consideration and
24 sufficient cause appearing therefor,

25 IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED that:

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1 1. Disposition. The Motion [ECF No. 91] is granted on a final basis
2 on the terms set forth herein. Any objections to the relief sought in the Motion, and any
3 reservations of rights with respect to such relief, that have not been previously resolved
4 or withdrawn are overruled on the merits. This Final Order shall be valid, binding, and
5 enforceable on all parties in interest and fully effective immediately upon entry.

6 2. Jurisdiction and Venue. This court has jurisdiction over this matter
7 pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper. This matter is a core
8 proceeding within the meaning of 28 U.S.C. § 157(b)(2).

9 3. No Waivers. The Debtor makes no representation, warranty,
10 acknowledgement or admission regarding whether it has (or does not have) any
11 defenses, setoffs, counterclaims or recoupments that could be asserted against the Cash
12 Collateral Parties, and the Debtor reserves all rights, claims and defenses with respect
13 thereto. In addition, the Debtor make no representation, warranty, acknowledgement
14 or admission with respect to the enforceability, perfection, priority, avoidability or
15 validity of the security interests of the Cash Collateral Parties in the Debtor's assets,
16 including cash collateral.

17 4. Cause Shown. Good cause has been shown for the entry of this Final
18 Order.

19 5. Business Justification. The Debtor has a critical need to use cash
20 collateral, in order to permit, among other things, preservation and maintenance of the
21 Debtor's business operation and assets. The Debtor's access to sufficient working
22 capital and liquidity through the use of cash collateral is vital to maximizing the value
23 of the Debtor's estate.

24 6. Fair and Reasonable Terms. Based on the record presented to this
25 court at the final hearing, the terms of use of the cash collateral are fair and reasonable

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1 and reflect the Debtor's exercise of prudent business judgment consistent with its
2 fiduciary duties.

3 7. Authorization to Use Cash Collateral. Subject to the terms of this
4 Final Order, the Debtor is hereby authorized to use cash collateral, from the date hereof
5 through the earliest of: (i) November 14, 2021; (ii) the effective date of a confirmed
6 plan of reorganization in this chapter 11 case, (iii) the closing of a sale of substantially
7 all assets of the Debtor; and (iv) the occurrence of an Event of Default (as defined
8 below) by the Debtor under this Final Order (the "Budget Period"), or such other date
9 as the Debtor, Washington Trust, and CHS may agree to in writing when, as and to the
10 extent permitted under the budget attached hereto as Exhibit 1, or when, as and to the
11 extent permitted by such other budget as the Debtor, Washington Trust, and CHS may
12 agree to in writing from time to time (the "Budget"), provided that any such other
13 budget shall be promptly provided, at least three (3) business days before going into
14 effect, to the other Cash Collateral Parties and each Committee.

15 8. Disbursements Subject to Budget. The Debtor is only authorized to
16 use cash collateral during the Budget Period in a manner consistent with the Budget;
17 provided that, disbursements may occur earlier or later than the dates forecasted in the
18 Budget so long as such disbursements occur during the Budget Period, including to fund
19 or reserve amounts necessary to pay professional fees accrued to the extent set forth in
20 the Budget.

21 9. Events of Default. The following shall constitute Events of Default
22 under this Final Order:

23 (i) Failure to abide by any material term, covenant or condition
24 approved by or incorporated into this Final Order;

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- (ii) Termination of the automatic stay with respect to any cash collateral;
- (iii) Absent the prior written approval of Washington Trust and CHS, the Debtor’s “Ending Cash” is lower than the Budget by more than 20% for the week ending week 2, the week ending week 4 and bi-weekly thereafter;
- (iv) The Debtor fails to maintain adequate insurance covering the collateral;
- (v) Any of the collateral is converted by the Debtor, lost or stolen in any material amount due to a failure on the part of the Debtor to take reasonable precautions to protect the collateral from loss or waste, or not accounted for by the Debtor;
- (vi) The Debtor fails to timely deliver any reports required hereunder;
- (vii) Entry of an order converting the Debtor’s case to a proceeding under Chapter 7; and
- (viii) Entry of an order dismissing Debtor’s Chapter 11 Case.

10. Remedies Upon Default. Upon the occurrence of an Event of Default, any Cash Collateral Party may immediately, without notice or demand withdraw its consent for the use of cash collateral. Nothing in this Order limits or otherwise impairs the ability of any Cash Collateral Party to seek relief from the automatic stay or other relief from the ~~E~~court.

11. Reporting. The Debtor shall provide to the Cash Collateral Lenders and each Committee, without limitation, the following items:

(i) Weekly, a cash flow report for all periods since the Petition Date, including a comparison of actual results to the projections set forth in the Budget; and

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(ii) Any other information that the Cash Collateral Lenders reasonably request.

The Debtor further agrees to permit representatives from Washington Trust and CHS to, upon reasonable prior notice, visit any of Debtor's properties during regular business hours to review and inspect any of their prepetition collateral together with any non-privileged books and records related thereto

12. Adequate Protection. The Cash Collateral Parties are entitled, pursuant to sections 361, 362(d) and 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the Debtor's property, for and equal in amount to the aggregate diminution in the value of the interests of the Cash Collateral Parties in the Debtor's property (including cash collateral) with the same validity (or invalidity), perfection (imperfection or avoidable perfection) and priority (or lack of priority) as exists as of the Petition Date (the "Diminution in Value") resulting from the use, sale or lease by the Debtor (or other decline in value) of the cash collateral and any other asset of the Debtor that is the subject of existing liens and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Cash Collateral Parties,³ are hereby granted the following (subject to the same priorities that exist as among such prepetition secured creditors as of the Petition Date):

(i) a continuing security interest in and lien on all collateral of the Debtor of the same type and nature that exists as of the Petition Date with the same validity (or invalidity), perfection (imperfection or avoidable perfection) and priority (or lack of priority) as exists as of the Petition Date, including the proceeds thereof (the “Replacement Liens”),

³ In connection with providing adequate protection to Prudential and Equitable, Debtor Farms has included the payment of rent and taxes related to applicable leaseholds in the Budget.

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- (ii) solely to the extent of any Diminution in Value, an additional and replacement security interest in and lien on all property and assets of the Debtor's estate (the "Adequate Protection Liens"), provided however, that (a) such security interest and lien shall be junior to any existing, valid, senior, enforceable and unavoidable prior perfected security interests and liens, (b) in the event that the Debtor obtains postpetition financing in this chapter 11 case, such security interest and lien may be junior to any valid, senior, enforceable security interests and liens granted to the postpetition lenders and authorized by this court in connection with such postpetition financing, provided, however, that each of the Cash Collateral Parties and each Committee reserves its respective right to object to such financing or to the granting of any such liens, and (c) such security interest and lien shall not attach to any claims, defenses, causes of action or rights of the Debtor arising under sections 542-553 of the Bankruptcy Code and applicable state fraudulent transfer law (including all proceeds thereof), and
- (iii) solely to the extent of any Diminution in Value, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative claim in this chapter 11 case (the "Adequate Protection Claims"), provided however, in the event that the Debtor obtains postpetition financing in this chapter 11 case, such administrative claim, if any, may be junior to the administrative claim granted to such postpetition lenders and authorized by this court in connection with such postpetition financing.

The Replacement Liens and Adequate Protection Liens will be deemed to be perfected automatically upon entry of this Final Order, without the necessity of filing any UCC-1 financing statement, state or federal notice, mortgage or similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

13. Funding of Segregated Account for Feed Suppliers. The amounts set forth in the Budget for the payment of “Feed – Third Party (Consumed & Not Paid)”

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1 shall be deposited by the Debtor, at the times identified in the Budget, into a segregated
2 account of the Debtor pending further order of this court.

3 14. Funding of Segregated Account for Estate Professionals. The
4 amounts set forth in the Budget for the payment of “Professional Fees – Debtor” and
5 “Professional Fees – Committee” may be deposited by the Debtor, at the times
6 identified in the Budget, into a segregated account of the Debtor (“Segregated Account
7 for Professionals”) for the intended purpose of subsequently paying such amounts on
8 the later of (x) the due date, or (y) the date of their allowance by this court (or when
9 otherwise authorized to be paid pursuant to a customary order of this court pursuant to
10 section 331 of the Bankruptcy Code). The use of this fund is not limited to its stated
11 intended purpose. For the avoidance of doubt, the amounts set forth in the Budget for
12 the payment of estate professional fees and the amounts funded to the Segregated
13 Account for Professionals are not, and shall not be construed to be, a cap or other
14 limitation on the amounts that may be incurred or allowed for estate professional fees
15 in these bankruptcy cases.

16 15. Section 552. Each of the Cash Collateral Lenders is entitled to all
17 of the rights and benefits of section 552(b) of the Bankruptcy Code and, except as to
18 any issues or objections that may be raised by each Committee, the “equities of the
19 case” exception will not apply. For the avoidance of doubt, this paragraph 15 is only
20 applicable with respect to Debtor Easterday Farms and is not applicable to Debtor
21 Easterday Ranches, Inc.

22 16. Real Estate Lease Payments. Notwithstanding anything to the
23 contrary herein or in the Budget, the payments for “Real Estate Leases” set forth in the
24 Budget for April and May 2021 shall not be made by the Debtor absent written consent
25 of Washington Trust or further order of this court.

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1 17. Binding Effect; Successors and Assigns. The provisions of this
2 Final Order, including all findings herein, shall be binding upon all parties in interest in
3 the chapter 11 case, including, without limitation, the Cash Collateral Parties, each
4 Committee, and the Debtor, and their respective successors and assigns (including any
5 chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor's estate)
6 and shall inure to the benefit of the Cash Collateral Parties, each Committee, and the
7 Debtor, and their respective successors and assigns.

8 18. Reservation of Rights. The Debtor reserves all rights to seek other
9 or additional use of cash collateral or debtor in possession financing on such further or
10 different terms and conditions as may be approved by this court. Nothing in this Final
11 Order may be construed as a consent to any such request by any Cash Collateral Party
12 or each Committee, and the Cash Collateral Parties and each Committee reserve all
13 rights to object to such requests. Further, notwithstanding the amounts set forth in the
14 Budget or the payments made by the Debtor in accordance therewith, all rights of the
15 Debtor, the Cash Collateral Parties, Tyson, and each Committee to challenge, contest,
16 dispute, or seek return of such amounts or payments at a later date on any basis
17 permitted by law or equity are in no way affected or diminished and are hereby
18 expressly preserved, including but not limited to any rights with respect to (a) whether
19 the amounts or payments in the Budget should be allocated to or borne by another party
20 and (b) the propriety of any payments by Ranches to the Debtor on account of feed
21 delivered prepetition by the Debtor or any third party feed supplier.

22 19. Effectiveness. Notwithstanding Bankruptcy Rules 4001(a)(3),
23 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the
24 Federal Rules of Civil Procedure, this Final Order shall be immediately effective and

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1 enforceable upon its entry and there shall be no stay of execution of effectiveness of
2 this Final Order as provided in such Rules.

3

4 //END OF ORDER//

5 PRESENTED BY

6

7 */s/ Thomas A. Buford*
THOMAS A. BUFORD, III (WSBA 52969)
8 BUSH KORNFELD LLP

9 RICHARD M. PACHULSKI (admitted *pro hac vice*)
10 JEFFREY W. DULBERG (admitted *pro hac vice*)
11 MAXIM B. LITVAK (admitted *pro hac vice*)
12 PACHULSKI STANG ZIEHL & JONES LLP

13 *Attorneys for Debtors
and Debtors in Possession*

14 * Change made by court

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FINAL ORDER AUTHORIZING DEBTOR
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Exhibit 1

Budget

Easterday Farms
Cash Collateral Budget
3/1/2021 - 10/31/2021

(\$000s)	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Total Mar-Oct'21
Receipts									
Wheat (2021 crop)	-	-	-	-	-	5,083	5,083	-	10,166
Feed (due from Ranches)	3,092	1,393	746	219	-	-	-	-	5,450
Excess Feed	-	-	-	-	5,090	-	-	-	5,090
Easterday Farms Produce	285	1,968	2,052	2,566	2,052	2,566	1,763	897	14,148
LW Potatoes	1,300	2,350	2,350	-	-	-	-	-	6,000
Lindsay Canyon sublease revenue	2,830	146	146	146	-	-	-	-	3,267
Total Receipts	\$ 7,507	\$ 5,856	\$ 5,294	\$ 2,930	\$ 7,142	\$ 7,648	\$ 6,846	\$ 897	\$ 44,121
Operating Disbursements									
Direct Expenses									
Utilities	316	359	412	370	117	117	363	2	2,056
Feed - 3rd Party (Consumed & Not Paid)	1,126	232	-	-	-	-	-	-	1,358
Fertilizer	176	702	527	-	-	-	-	-	1,404
Chemical	72	274	200	-	-	-	-	-	546
Custom Hire	-	-	-	-	267	267	-	-	534
Seed	434	-	-	-	-	-	-	-	434
Indirect Expenses									
Payroll	455	477	361	349	439	304	106	12	2,502
Fuel & Oil	317	267	192	167	142	142	132	132	1,487
Equipment Parts & Repairs	179	179	104	54	54	54	54	54	730
Freight	-	-	-	-	208	208	-	-	416
Irrig Parts/Repairs	100	50	20	-	50	80	-	-	300
Licenses & Permits	15	15	15	15	15	15	15	15	120
Maintenance	30	30	15	5	5	5	5	5	100
Farm supplies	10	10	10	10	10	10	10	-	70
Soil Tests	-	10	-	-	-	-	-	-	10
Total Oper. Disb. Before RE & Leases	\$ 3,228	\$ 2,605	\$ 1,855	\$ 969	\$ 831	\$ 1,201	\$ 1,159	\$ 219	\$ 12,067
Cash Flow Before RE & Leases	\$ 4,279	\$ 3,251	\$ 3,439	\$ 1,961	\$ 6,311	\$ 6,447	\$ 5,687	\$ 677	\$ 32,053
Fixed Operating Disbursements									
Real Estate Leases	9	230	979	3	48	3	3	-	1,274
Equipment Leases	51	-	-	51	-	-	51	-	154
Property Taxes	-	157	-	-	-	-	157	-	314
Total Fixed Oper. DIsb	60	387	979	54	48	3	211	-	1,741
Cash Flow From Operations	\$ 4,219	\$ 2,865	\$ 2,460	\$ 1,907	\$ 6,263	\$ 6,445	\$ 5,476	\$ 677	\$ 30,312
Corporate Overhead									
Taxes	3	170	3	3	52	2	119	52	404
Professional Services	25	60	25	200	25	-	-	-	335
Insurance	31	31	31	36	36	36	46	36	279
Payroll	17	17	17	17	22	17	17	17	138
Utilities	11	11	11	11	11	11	11	11	90
Other Misc.	64	64	64	64	64	64	64	64	510
Total Corp. OH	150	352	150	330	210	129	256	179	1,756
Restructuring Disbursements									
Personnel Restructuring	182	182	100	50	50	-	-	-	564
Real Estate Pre-sale Costs	500	-	-	-	-	-	-	-	500
US Trustee and Misc. Reserve	-	99	-	-	58	-	-	40	198
Directors Fees	30	30	30	30	30	30	30	30	240
D&O Insurance	200	-	-	-	-	-	-	-	200
Professional Fees - Debtor	420	420	420	420	420	420	420	420	3,360
Professional Fees - Committee	130	130	130	130	130	130	130	130	1,040
Total Restructuring Disb.	\$ 1,462	\$ 861	\$ 680	\$ 630	\$ 688	\$ 580	\$ 580	\$ 620	\$ 6,102
Total Disbursements	\$ (4,900)	\$ (4,205)	\$ (3,664)	\$ (1,982)	\$ (1,778)	\$ (1,913)	\$ (2,206)	\$ (1,019)	\$ (21,667)
Cash On-Hand									
Beginning Book Cash	2,338	4,944	6,596	8,226	9,174	14,538	20,274	24,914	2,338
Total Net Cash Flow	2,606	1,652	1,630	948	5,365	5,735	4,640	(122)	\$ 22,454
Ending Book Cash	\$ 4,944	\$ 6,596	\$ 8,226	\$ 9,174	\$ 14,538	\$ 20,274	\$ 24,914	\$ 24,792	\$ 24,792